

M/WBE BUILD UP PROGRAM



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Implementation Guidance for Developers/Borrowers

The Division of Economic Opportunity and Regulatory Compliance

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The program is subject to change; consequently please refer to the information found on HPD’s website which reflects the program’s current policies and requirements.

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Program Overview

The M/WBE Build UP program is a component of the [Building Opportunity initiative](#) and aims to increase contracting opportunities for certified Minority- and Women-Owned Business Enterprises (M/WBEs) in the development of HPD/HDC-subsidized affordable housing projects.

What Is the M/WBE Build Up Program?

The program requires developers/borrowers to spend at least [a quarter of HPD/HDC-supported costs](#) on certified M/WBEs over the course of the design and construction of an HPD/HDC-subsidized project. A minimum goal will be calculated and required for each project subject to the program. Developers may adopt a goal higher than the minimum.

All payments, regardless of funding source, to certified M/WBEs performing construction or providing professional services count toward the goal. For example, payments going towards a certified M/WBE architect or a certified M/WBE painter will count toward the goal.

When Does the Program Apply?

If HPD and HDC contributes two million dollars or more to a particular project, the developer/ borrower is required to participate in M/WBE Build UP. For these projects, a minimum goal of a quarter of HPD/HDC-supported costs are to be spent on certified M/WBE construction contractors and professional service providers.

What Do Developers/Borrowers of Eligible Projects Have to Do?

All eligible projects must adhere to M/WBE Build UP requirements, which generally include hiring and utilizing certified M/WBEs for predevelopment and construction work on the project.

How Can HPD Help Developers/Borrowers Meet Goals?

HPD's M/WBE staff are available to support developers/borrowers and their general contractors efforts to meet the project's M/WBE participation goal. M/WBE staff has compiled [resources](#) to help developers/borrowers and their general contractors identify certified M/WBEs.

Is There a Process for Requesting a Goal Reduction Prior to Construction Loan Closing?

Yes, when the budget for the project is finalized, a developer/borrower may submit the appropriate Goal Reduction Request Form to M/WBE staff for consideration. Such requests must be received two (2) weeks prior to the construction loan closing. Post-construction loan closing, a developer/borrower may also submit a Goal Modification Request if applicable. [See the Goal Reductions section](#) of this Implementation Guidance for more information.

What If I Have Difficulty Meeting My Goal During Construction?

HPD M/WBE staff will consider requests to reduce M/WBE goals during the construction phase of a project. Developers/borrowers may request a goal reduction by submitting a [During Construction M/WBE Goal Modification Request Form](#) which requires a demonstration of good faith efforts.

What Constitutes Good Faith Efforts?

Developer/ Borrower must show evidence that Borrower, prime contractors, and/or subcontractors made timely written requests for assistance to the New York City Department of Small Business Services ("DSBS") and provide a description of how recommendations made by DSBS were acted upon as well as an explanation of why action upon such recommendations did not lead to the desired level of participation of M/WBEs.

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In addition, HPD shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) Advertised opportunities in general circulation media and small business media, and publications of minority and women's business organizations;
- (ii) Provided notice of specific opportunities to participate in the Project, in a timely manner, to M/WBEs and responded thoroughly and timely to inquiries from such M/WBEs;
- (iii) Efforts made to identify portions of the work that could be substituted for M/WBEs in the Implementation Plan;
- (iv) Meetings held with M/WBEs prior to the date of bids or proposals to explain scope of work.

What Happens if Developers/Borrowers Fail to Meet Goals?

If developers/borrowers complete construction and fail to fulfill their M/WBE spending requirements, then developers/borrowers should submit documentation showing good faith efforts to meet their goal. Developers/borrowers who fail to meet the goal AND do not exercise good faith efforts may be subject to liquidated damages and such performance may be factored into HPD's consideration of developer/borrower's (and principals) participation in future business dealings with HPD and HDC.

What Happens if Developers/Borrowers Must Report M/WBE Requirements to Other Agencies?

HPD's M/WBE staff will work with the developer/borrower to be sure that HPD's reporting timeline is in line with requirements from other agencies when necessary.

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Calculating the Minimum Goal

What Are HPD/HDC-Supported Costs?

The HPD/HDC-supported costs are identified by accounting for the project costs and HPD/HDC contribution rate. Specifically, HPD/HDC-supported costs are calculated by multiplying the applicable costs and the proportion of the deal that is subsidized by the City (i.e. HPD/HDC contribution rate).

See the formula below for details on calculating HPD/HDC-supported costs and the minimum goal:

HPD/HDC-Supported Costs			
M/WBE	Applicable Costs (\$)	HPD/HDC Contribution Rate (%)	Minimum Goal Rate (%)
Minimum Goal (\$)	Applicable Hard and Soft Costs*	HPD/HDC Contribution** TDC***	25%
		X	X

*Applicable costs are a subset of all project costs. Costs are applicable if developers/borrowers or general contractors have the ability to hire or influence the hiring of a firms. See the [Applicable Costs guide](#) for more details on which types of costs are applicable.

**The HPD/HDC Contribution is the sum of the:

- Direct City investment (i.e. City Capital, Reso A, 421-a Fund, Our Space, etc.),
- HDC subsidy (i.e. HDC Green Reserves, HDC Subsidy), and
- Net Value of Conveyed or Leased City Land:
 - As Is appraisal value of Conveyed City-Owned Land (minus the acquisition fee)
 - NPV of Market value of ground lease (minus NPV of ground lease)

*** The Net Value of Conveyed or Leased City Land will be added to the Total Development Costs (TDC) when City-Owned land is conveyed or leased with the project.

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Which Costs Are Applicable?

Applicable costs are a subset of all project costs. Costs are applicable if developers/borrowers or general contractors have the ability to hire or influence the hiring of a firm. For example, an appraisal conducted by an entity hired by the developer/borrower is an applicable cost. However, an appraisal conducted by an entity hired by the bank is a non-applicable cost.

A list of typical applicable costs is found below. Developers/borrowers with questions about the applicability of a budget line can ask HPD's M/WBE staff for clarification.

Applicable

Acquisition Costs

- Demo Costs

Construction Costs (including labor and materials)

- All Construction Costs, not including contingency

Soft Costs

- Accounting
- Borrower's Appraisal
- Borrower's Architect
- Borrower's Engineer (e.g. Green engineer)
- Borrower's Legal Fees
- Capital Needs Assessment
- Construction Monitor
- Consultant (e.g. Development, Environmental, Expeditor, Green, Owner's Representative)
- Cost Certification
- Land Survey
- Leasing Agent/Broker
- Market Study
- Partnership Management Fee
- Soil Borings
- Tax Opinion
- Title Insurance & Recording

Carrying Costs

- Builder's Risk & Liability Insurance
- License Agreement Insurance
- Marketing
- Marketing Agent
- Consultant (e.g. relocation)

Not Applicable

Acquisition Costs

- Land Price

Construction Costs

- Contingency

Soft Costs

- Bank-Financed Services (e.g. Appraisal, Engineer, Legal Fees)
- HPD Fees (e.g. signs, EO)
- Permitting Fees
- Offering Plan (e.g. Bank, AG)
- Staging

Financing Fees

- Bank Fees (e.g. Annual L/C Fee, Upfront L/C Fee/Commit Fee, L/C Bank Fee, L/C Due Diligence/Underwriting Expenses, Credit Enhancement Fees, Mortgage Insurance Fees, Conversion)
- Government Agency Fees (e.g. Bond Issuance Fees, HDC Fee, LIHTC Application & Allocation Fee, NY State Bond Issuance Charge, SLIHC Application & Allocation Fees, Tax Exemption Fees (e.g. 420-c, ICAP), Inclusionary & Zoning Fees)
- Partnership Publication
- Syndicator Fees

Carrying Costs

- Construction Financing Fee
- Construction Interest
- Real Estate Taxes, Water & Sewer

Reserves and Contingency

- Initial Operating Deficit
- Reserves (e.g. HDC Capitalized Operating, Investor Operating Reserve, Inclusionary, Lease Up, Retail & Leasing, Section 8, Social Services, FFE's)
- Soft Cost Contingency
- Working Capital

Developer's Fee

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Help Identifying M/WBEs

This page includes resources for developers and general contractors interested in identifying certified M/WBEs to perform work on their projects. *HPD does not endorse any of the firms or entities referenced below.*

Developers and general contractors that need help identifying certified professional service providers or contractors can view M/WBE certifying directories including those listed below:

NYC Small Business Services
www.nyc.gov/sbs

NYC School Construction Authority
www.nycsca.org

NYS Empire State Development
ny.newnycontracts.com

Port Authority of NY and NJ
www.panynj.gov

NJ Department of Treasury
www.nj.gov/treasury/revenue

Pre-qualified Lists

Additionally, other City and State agencies maintain lists of pre-qualified M/WBEs that perform construction work. Here are a few resources for the NY metro area:

Agency	Type of List
NYC Department of Design and Construction (DDC)	DDC maintains a number of pre-qualified list of contractors , some of which are M/WBEs. These lists include firms that can perform general construction duties or that specialize in plumbing, mechanical, or electrical work.
NYC Economic Development Corporation (EDC)	Through the ConstructNYC program EDC maintains a pre-qualified list of minority-, women-, and veteran-owned businesses that can perform construction work.
NYC School Construction Authority (SCA)	SCA maintains a database of pre-qualified contractors , some of which are M/WBEs. You can search for firms by specialty, which include plumbing, HVAC, or electrical work.
NYS Homes and Community Renewal (HCR)	HCR maintains a list of NYS certified M/WBEs that have worked on HCR-funded projects . HCR also pre-qualifies professional service providers that can assist with your project.
Port Authority of NY and NJ (PANYNJ)	PANYNJ maintains a database of contractors that registered with PANYNJ. You can search for a firm by trade specialty, which include and are not limited to: asbestos removal, concrete, demolition, electric, elevator installation, HVAC, mechanical, plumbing, roofing, and steel fabrication.

Trade Associations

A number of trade associations support certified M/WBEs firms performing construction activities. These organizations may be a start to identifying more M/WBEs. Additionally, the associations listed below may hold events, which could offer opportunities to network with M/WBEs.

[Asian Women in Business](#)
[New York Real Estate Chamber](#)

[New York State Association for Affordable Housing](#)
[Professional Women in Construction](#)
[NY Hispanics in Real Estate & Construction](#)

[Regional Alliance for Small Contractors](#)

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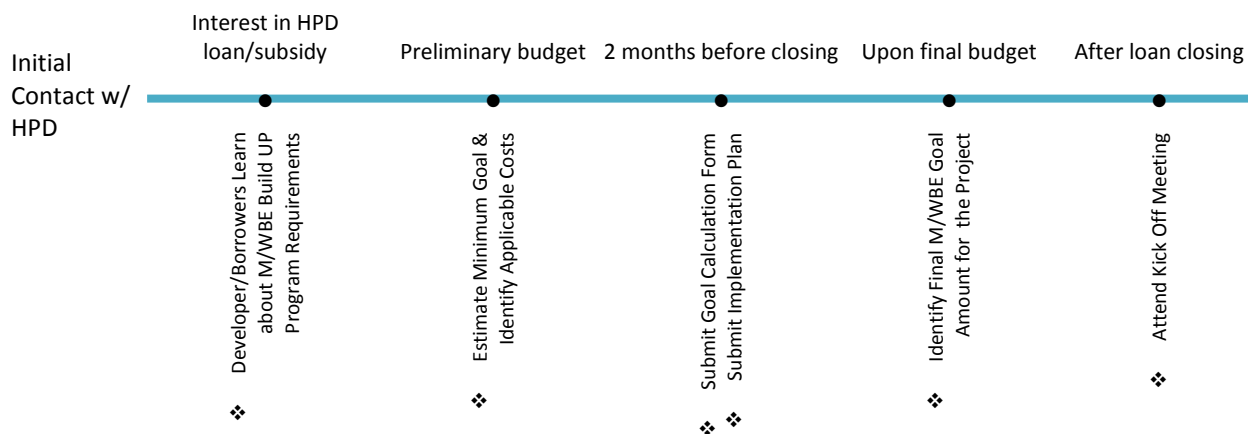
Predevelopment Requirements

Before closing on a construction loan, developers/borrowers of eligible projects must complete three steps:

1. Identify the applicable minimum participation goal and submit the signed [M/WBE Goal Calculation Form](#)
2. Complete and submit the signed [Implementation plan](#)
3. Confirm the minimum goal amount, based on a finalized budget.

HPD staff will work with developers/borrowers through the course of predevelopment to ensure the fulfillment of all of these requirements. While the assigned HPD Project Manager will be the main point of contact (even for deals financed jointly with HDC), HPD’s M/WBE staff are available to answer any of your questions.

Timeline to Complete Predevelopment Requirements



Timeline	Predevelopment Requirements
Interest in participating in an HPD/HDC affordable housing program	<p>Developers/Borrowers Learn about M/WBE Build UP Program Requirements</p> <ul style="list-style-type: none"> • <u>At project initiation, developers/borrowers may be provided with a program package from appropriate HPD Development staff or may access the program package available on HPD’s website at http://www1.nyc.gov/site/hpd/developers/mwbe-build-up-program.page</u> M/WBE Build UP Program package includes: <ul style="list-style-type: none"> ○ Program guidance for developers/borrowers, which includes a program overview and process steps. ○ Sample goal calculation form that depicts an integrated goal calculation form and the inputs required. ○ Implementation Plan form that details how the M/WBE goal for the project will be met.

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Timeline	Predevelopment Requirements
	<p><i>For project with HPD-monitored closed competitive bids:</i></p> <ul style="list-style-type: none"> • <u>Developers/Borrowers</u> should begin thinking about M/WBE outreach and document efforts at initial engagement. • <u>Developers/Borrowers</u> should review language in bid packages that require developers/borrowers to perform outreach to M/WBEs during the bid solicitation process. • <u>Developers/Borrowers</u> in need of assistance in identifying M/WBEs should reach out to M/WBE staff or utilize the resources noted on HPD’s website.
<p>Preliminary Budget— Initial estimate of HPD contribution for the project</p>	<p>Estimate Minimum Goal & Identify Applicable Costs</p> <ul style="list-style-type: none"> • The preliminary budget from HPD will include a M/WBE Goal Calculation Form tab which will be incorporated into the underwriting workbook and shall be shared with Developer/Borrower. • <u>Developer/Borrower</u> must complete the M/WBE Goal Calculation form to identify which line items are applicable costs following the agency’s guidelines, which ensures that all costs are accounted for in the form, and submits it to the project manager; Costs are applicable if developers/borrowers or general contractors have the ability to hire or influence the hiring of a firm. M/WBE staff can clarify questions about applicable costs.
<p>Two months before scheduled loan closing</p>	<p>Submit Goal Calculation Form</p> <ul style="list-style-type: none"> • <u>Developer/Borrower</u> initials the current goal calculation form to show that they have reviewed/approved the applicable cost designations. • <u>Assigned Project Manager</u> submits form along with current underwriting to M/WBE staff, and it may come back to the developer/borrower if M/WBE staff have questions. • <u>Appropriate HPD Development staff</u> will inform the developer/borrower when M/WBE staff have approved the budget framework and of the preliminary M/WBE goal amount. • Note: <i>The preliminary goal is subject to change as the budget changes. The Final goal amount will be identified with the final budget prior to closing on the construction loan.</i> <p>Submit Implementation Plan</p> <ul style="list-style-type: none"> • Upon approval of the budget framework, <u>Developer/Borrower</u> submits a completed signed electronic Implementation Plan form to M/WBE staff, cc’ing Project Manager. • <u>M/WBE staff</u> will inform the developer/borrower if there are issues with the Implementation Plan Form submitted.

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Timeline	Predevelopment Requirements
Once HPD/HDC contribution & development budget finalized (i.e. Commitment letter drafted for final signoff)	Identify Final M/WBE Goal Amount for the Project <ul style="list-style-type: none">Once the development budget is finalized, the <u>Developer/Borrower</u> will be informed of the final M/WBE goal amount for the applicable project, which shall be included in the relevant closing documents.<u>Developer/Borrower</u> signs M/WBE rider at time of construction loan closing memorializing the minimum goal amount.
After construction loan closing	Attend Kick Off Meeting <ul style="list-style-type: none">M/WBE Build UP program compliance will either be discussed in construction kick-off meeting if applicable or a Kick-off M/WBE Goal Compliance Package will be distributed.

M/WBE Build UP goal setting is part of the development timeline. Close coordination between Development staff, M/WBE staff, and the developer/borrower will be key to avoid confusion and potential closing delays. Questions about the program or budget line items along with related changes should be directed to M/WBE staff.

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EXCEPTIONS

M/WBE Build UP does not apply to the following:

1. Projects that do not meet the required \$2 million program participation threshold as determined by HPD
2. Projects participating in closed competitive bid process with a bid solicitation circulated prior to April 1, 2017
3. Projects without any construction activity planned.

If your project meets any of the exceptions listed above, then your project manager will submit a written request for a project **exemption** to the HPD M/WBE staff:

M/WBE GOAL REDUCTIONS

Pre-Closing Reduction Requests. Prior to a construction loan closing, M/WBE staff will only consider requests for a goal reduction for projects that can meet the criteria below:

- For closed competitively bid projects:
 - When the project's development budget is finalized, developers/borrowers can provide (i) evidence of good faith efforts and (ii) information about winning bids
 - Developer/borrowers should complete and submit the applicable Goal Reduction request no later than two (2) weeks before construction loan closing.
 - An [M/WBE Applicable Cost Reduction Request Form for a Closed Competitive Bid Project](#) should be completed and submitted no later than two (2) weeks before construction loan closing.
- For projects closing within Fiscal Year 17:
 - With final budget, M/WBE staff will consider goal modifications for developer/borrowers that can demonstrate: (i) predevelopment costs incurred or spent and/or (ii) contracts entered into prior to April 1, 2017 for labor or services for which there is no ability to substitute firms or subcontract work.
 - Developer/borrowers should complete and submit the applicable [Goal Reduction Request Form for FY 17 Projects](#) no later than two (2) weeks before construction loan closing.
- For all other projects: To keep closing schedules on track developers/borrowers should submit a request for a goal reduction after the construction loan closing.

During Construction Goal Modification Requests

- M/WBE goal modifications are also possible post-construction loan closing by submitting a [During Construction M/WBE Goal Modification Request Form](#) which requires developers/borrowers to provide the following:

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- (i) Demonstrate that good faith efforts were used to identify and utilize M/WBEs for all components of the construction project;
- (ii) Demonstrate that no substitution or subcontracting opportunities remain for the duration of the project.

Good Faith Efforts

HPD may grant a request for modification of Borrower's Participation Goal if it determines that the Developer/ Borrower has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goal. Good faith efforts includes evidence that Borrower, prime contractors, and/or subcontractors made timely written requests for assistance to the New York City Department of Small Business Services ("DSBS") and provide a description of how recommendations made by DSBS were acted upon as well as an explanation of why action upon such recommendations did not lead to the desired level of participation of M/WBEs.

In addition, HPD shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (i) Advertised opportunities in general circulation media and small business media, and publications of minority and women's business organizations;
- (ii) Provided notice of specific opportunities to participate in the Project, in a timely manner, to M/WBEs and responded thoroughly and timely to inquiries from such M/WBEs;
- (iii) Efforts made to identify portions of the work that could be substituted for M/WBEs in the Implementation Plan;
- (iv) Meetings held with M/WBEs prior to the date of bids or proposals to explain scope of work.

All M/WBE goal reduction requests are to be directly submitted to M/WBE staff at mwbebuildup@hpd.nyc.gov.

Contacts

If there are specific questions about the program or policies, please contact:

Kevin V.G. Wells

Director of Responsible Economic Inclusion

wellske@hpd.nyc.gov

For submission of signed Implementation Plans and goal reduction requests:

mwbebuildup@hpd.nyc.gov

For Information about the Program

Program website has the latest information about the program:

<http://www1.nyc.gov/site/hpd/developers/mwbe-build-up-program.page>

Resources for developers/borrowers and GCs to find M/WBEs:

<http://www1.nyc.gov/site/hpd/developers/identifying-mwbcs.page>